

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AMERITOX, LTD. and MARSHFIELD
CLINIC,

v.

Plaintiffs,

ORDER

13-cv-832-wmc

MILLENNIUM HEALTH, LLC,

Defendant.

Having reviewed deposition designations, counter-designations and any objections of witness Howard Appel, the court makes the following rulings. The approved designations may be presented to the jury unless the witness is available to testify in person. **The parties shall remove all objections and any other asides or discussions between counsel, even where not noted by the court in its rulings.** If the court sustained the objection to the original testimony, the counter designations are also out.

NOVEMBER 11; 2011 DEPOSITION OF HOWARD APPEL			
Plaintiffs' Designations	Millennium's Objections	Millennium's Counter-Designations	Ruling
11:9-13			
17:17-18:13	Relevance		Overruled
18:19-23	Relevance		Overruled
19:19-20:8	Relevance		Overruled
20:22-21:7	Form		Overruled
29:19-30:7	Foundation; Barred by Judge Crocker ruling; Relevance		Sustained
49:18-23	Foundation	48:2-12; 49:24-25	Overruled
81:5-9			
82:2-19		84:3-12	
85:2-16			
85:24-87:4			
120:24-121:10		121:11-12	

121:19-22			
121:25-123:10			
123:21-124:9			
124:18-23			
125:2-126:10			
177:17-182:21	Form; Foundation		Sustained as to 182:6-7; overruled in all other respects
183:6-20			
204:13-205:16			

JANUARY 21, 2015 DEPOSITION OF HOWARD APPEL			
Plaintiffs' Designations	Millennium's Objections	Millennium's Counter-Designations	Ruling
9:19-10:18			
10:23-24			
11:13-23		11:25-12:20	
22:6-20			
22:23-23:4	Form		Overruled
23:15-24:6			
24:16-25:14		25:20-26:4	
26:5-27:4			
27:25-31:21	Form		Overruled
32:1-4			
33:15-34:20		34:21-35:1	
36:18-37:8			
37:18-38:14	Form		Overruled
39:16-21	Calls for Speculation; Incomplete		Overruled
42:16-44:9	Relevance	64:6-8; 64:12-14	Sustained
47:24-48:9			
48:17-49:3			
52:1-18		52:19-53:9	
54:5-55:13		55:14-17	
55:18-25			
56:13-57:3			
57:13-58:24	Foundation, Scope; Calls for Speculation		Sustained as to liability; overruled as to damages
60:16-61:1			
61:19-25			
64:9-11		64:6-8; 64:12-14	

JANUARY 21, 2015 DEPOSITION OF HOWARD APPEL			
64:15-17			
65:6-66:4			
66:7-67:12	Relevance; More prejudicial than probative		Sustained as to liability; overruled as to damages
68:9-15	Relevance; More prejudicial than probative		Sustained
68:24-69:24		69:25-70:1	
70:2-72:9			
73:6-9	Form; Foundation		Sustained
73:24-74:15			
75:2-76:5		76:6-9	
77:19-78:10			
78:15-79:15			
80:2-5		80:8-81:1	
81:12-82:23			
84:19-85:10			
86:22-87:19			
92:20-94:10	Form; Foundation; Calls for Speculation; Relevance		Sustained
95:24-96:4			
98:4-20	Relevance		Sustained
104:6-20			
107:25-108:20			
109:18-21			
115:12-116:7	Incomplete Hypothetical; Calls for Speculation; Relevance		Sustained as to liability; overruled as to damages
116:17-117:4	Foundation; Relevance; Opinion Testimony		Sustained as to liability; overruled as to damages
118:15-24	Foundation; Relevance; Opinion Testimony		Sustained as to liability; overruled as to damages
119:2-13	Foundation; Relevance; Opinion Testimony		Sustained
121:25-123:6	Speculation; Foundation		Sustained as to liability; overruled as to damages

JANUARY 21, 2015 DEPOSITION OF HOWARD APPEL			
123:13-23		123:24-124:5	
126:14-22			
127:18-128:6	Relevance; More prejudicial than probative		Sustained; 128:12-13 is also excluded
128:12-13		128:7-11	
131:10-132:1	Relevance		Sustained
141:9-142:8			
151:24-152:12	Form; Foundation; Relevance	152:13-19	Sustained as to liability; overruled as to damages
152:21-153:25	Form; Foundation; Relevance	152:13-19	Sustained as to liability; overruled as to damages
154:6-155:7			
156:12-158:19	Hearsay		Overruled
159:19-160:10	Hearsay	160:11-21; 163:8-19	Overruled
160:22-162:2	Hearsay; Foundation	160:11-21; 163:8-19	Sustained
167:3-170:11	Foundation; Calls for Speculation	170:13-21	Overruled
170:22-171:9	Calls for Opinion Testimony		Overruled
177:21-178:3		178:5-14	
180:23-182:15	More prejudicial than probative		Overruled
185:13-186:4	More prejudicial than probative		Overruled
186:21-188:2	More prejudicial than probative		Sustained
188:9-189:3	More prejudicial than probative		Sustained
189:14-194:5	Foundation; Form; Calls for Opinion Testimony; Calls for Speculation		Sustained
194:17-195:2	Foundation; Form; Calls for Opinion Testimony; Calls for Speculation	195:4-13	Sustained
198:11-20	Hearsay		Overruled
199:3-200:24	More prejudicial than probative; Hearsay; Foundation		Overruled
201:19-202:20	Hearsay; More prejudicial than probative		Overruled

JANUARY 21, 2015 DEPOSITION OF HOWARD APPEL			
203:9-204:13	More prejudicial than probative; Relevance		Sustained as to liability; overruled as to damages
204:21-205:5	More prejudicial than probative; Relevance; Opinion Testimony		Sustained
206:19-208:13	Hearsay		Sustained
209:2-23		209:25-210:13	
213:24-214:9			
219:20-220:2		219:7-19	
222:16-24		221:23-222:8	
223:2-6		221:23-222:8	
223:17-224:25	Foundation; Calls for Speculation; Relevance	225:1-4	Sustained
225:5-10	Foundation; Calls for Speculation; Relevance	225:1-4	Sustained
231:13-16			
232:4-234:12	Hearsay; More prejudicial than probative; Calls for Speculation; Foundation	234:13-22	Sustained
235:4-8	Hearsay; More prejudicial than probative; Calls for Speculation; Foundation	235:9-10	Sustained
242:14-243:7	Relevance		Sustained as to liability; overruled as to damages
244:8-19	Relevance		Sustained
246:7-11	Foundation; Relevance	246:12-16	Sustained
246:17-247:1	Relevance; Form	246:12-16	Sustained
256:14-259:13	Form; Foundation; Incomplete Hypothetical; Calls for Speculation; Relevance	259:14-16	Sustained
259:17-24	Form; Foundation; Incomplete Hypothetical; Calls for Speculation; Relevance	259:14-16	Sustained
260:9-262:14	Foundation; Calls for Speculation; Opinion Testimony; Hearsay	263:8-14	Overruled
264:9-265:3	Foundation; Calls for Speculation; Opinion Testimony; Hearsay		Overruled

JANUARY 21, 2015 DEPOSITION OF HOWARD APPEL			
264:16-265:7	Misidentification/unclear what this refers to – see above		Overruled
269:4-18	Relevance; Form; Foundation		Sustained
272:15-273:7	Relevance; Form; Foundation		Sustained as to liability; overruled as to damages
276:4-7		276:8-10	
276:11-277:22	Foundation; Calls for Speculation; Opinion Testimony	276:8-10	Overruled
279:22-283:15	Form; Foundation; Hearsay; Relevance	285:6-21	Overruled as to 282:1-23; Sustained in all other respects
283:20-285:4	Form; Foundation; Calls for Speculation; Hearsay; Relevance	285:6-21	Sustained as to liability; overruled as to damages
290:24-291:20	Hearsay	285:6-21	Sustained
292:13-293:17			
294:5-295:5	Relevance; More prejudicial than probative		Sustained
296:13-297:19	Foundation; Hearsay	297:20-298:4	Overruled
298:5-299:16	Foundation; Hearsay	297:20-298:4	Sustained
300:2-301:1	Relevance; More prejudicial than probative		Sustained
301:8-304:17	Foundation; Calls for Speculation; Hearsay; Relevance; More prejudicial than probative		Overruled as to 302:20-303:8; sustained in all other respects
305:20-307:8		307:9-13	
307:24-308:2			
308:12-310:1	Form; Foundation; Calls for Speculation; Relevance; More prejudicial than probative		Sustained
314:12-315:11			
316:25-319:2	Hearsay; Foundation		Overruled

JANUARY 21, 2015 DEPOSITION OF HOWARD APPEL			
319:9-320:16			
321:8-322:12	Foundation; Calls for Speculation; Hearsay		Sustained
323:18- 324:18	Foundation; Calls for Speculation; Hearsay		Sustained
325:2-25	Foundation; Hearsay; Relevance		Sustained as to liability; overruled as to damages
326:8-327:22	Foundation; Hearsay; Relevance		Sustained as to liability; overruled as to damages
328:20-330:3	Foundation; Calls for Speculation; Hearsay; Relevance		Sustained as to liability; overruled as to damages
330:7-17	Foundation; Calls for Speculation; Hearsay; Relevance		Sustained as to liability; overruled as to damages
331:24- 335:10	Foundation; Calls for Speculation; Hearsay; Relevance		Sustained
335:18- 337:16	Foundation; Calls for Speculation; Hearsay; Relevance		Sustained as to liability; overruled as to damages

Entered this 9th day of April, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge